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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 806 '87

LADUE & CO.,

Petitioner,

vs.

HERBERT BROWNELL, Jr., Attorney General of the United States, etc.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Ladue & Co., Plaintiff-Appellant below, by its duly authorized attorneys, and prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered on March 18, 1955.

In support of this petition your petitioner respectfully shows:

OPINIONS BELOW.

The order of the District Court is not reported. It is set forth in the record (R. 25-26).

The opinion of the Court of Appeals printed in Appendix A hereto, *infra*, p. 1a, is reported in 220 F. 2d, 468.

JURISDICTION.

The judgment of the Court of Appeals was entered on March 18, 1955, Appendix A hereto, *infra*, p. 1a.

The jurisdiction of this Court is invoked under 28 U.S. C., Section 1254 (1).

QUESTIONS PRESENTED.

1. Did the respondent, as successor to the Alien Property Custodian, have the right, power or authority to seize petitioner's property on April 13, 1953, the war between the United States and Germany having been officially terminated by proclamation of the President of the United States on October 24, 1951?

2. Does the reservation contained in the Joint Resolution of Congress terminating the state of war between the United States and Germany, approved October 19, 1951, contravene the Fifth Amendment to the Constitution of the United States?

3. Does the reservation in the Joint Resolution of Congress, approved October 19, 1951, exceed the war powers of Congress as granted to it by Article I, Section 8, Clause 11 of the Constitution of the United States?

4. Did the respondent, as successor to the Alien Property Custodian, have the right, power or authority under the Trading with the Enemy Act to seize, in time of peace, property alleged to have been owned by an unknown national of a former enemy country (Germany) six to eleven years prior to date of seizure, to wit: between December 11, 1941 and January 1, 1947?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. Article I, Section 8, Clause 11 of the Constitution of the United States provides:

> "That Congress shall have power • • •
>
> "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water."

2. The Fifth Amendment to the Constitution of the United States provides:

> "No person shall • • • be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

3. The Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C.A., App., Sec. 1, *et seq.* The relevant portions of this Act are appended to this petition as Appendix B hereto, *infra,* p. 9a.

4. Joint Resolution of Congress to terminate the state of war between the United States and the Government of Germany, approved October 19, 1951 (65 Stat. 451), appended to this petition as Appendix C hereto, *infra,* p. 10a.

5. Proclamation of the President of the United States terminating the state of war between the United States and the Government of Germany, dated October 24, 1951, 50 U.S.C.A. App., p. xx, appended to this petition as Appendix D hereto, *infra,* p. 11a.

STATEMENT OF THE CASE.

Petitioner is an Illinois corporation, engaged in buying, selling and distributing securities. It is the owner of Ten Certificates of Corporate Stock of the City of New

York Series [illegible]-17 and two St. Louis and Southwestern Railway Company mortgage bonds.

On April 13, 1953, approximately a year and a half after the official termination of the war between the United States and Germany, the respondent as successor to the Alien Property Custodian, vested in himself, for the use of the United States, title to the above-mentioned securities and directed the payment to him of accruals thereon. (See Vesting Order No. 19266, R. 7-9).

Said Vesting Order reads, in part, as follows:

> "Re: Securities owned by unknown German nationals"; • • •
>
> "That the persons who own the property described in sub-paragraph 2 hereof, who, if individuals, there is reasonable cause to believe on or since December 11, 1941, and prior to January 1, 1947, were residents of Germany, and which, if partnerships, corporations, associations or other business organizations, there is reasonable cause to believe on or since December 11, 1941 and prior to January 1, 1947, were organized under the laws of and had their principal places of business in Germany, are, and prior to January 1, 1947, were nationals of a designated enemy country (Germany)."

Petitioner subsequently filed its complaint in the District Court of the United States for the Northern District of Illinois, Eastern Division, setting forth the above facts, alleging that the said vesting order was void and of no force or effect, and that the action of the respondent in appropriating its securities and the accruals therefrom was a confiscation and taking of its property without due process of law.

The complaint prayed that the respondent be ordered to revest in petitioner the title to the securities, and that

he be required to account for and pay to petitioner all moneys received by him as income from said securities.

The Government moved to dismiss the complaint on the ground that petitioner had not filed the notice of claim required by Section 9 (a) of the Trading with the Enemy Act, which motion was granted by the District Court and subsequently affirmed by the United States Court of Appeals for the Seventh Circuit, (Appendix A, *infra*, p. 1a).

REASONS FOR GRANTING THE WRIT.

1. The Decision Below decides an exceptionally important question of Federal law which has not been, but should be, settled by this Court.

The decision of the Court below is the first pronouncement by any Court that the Government can, under its war powers, seize property of former enemy aliens after the state of war has been officially terminated.

This holding is directly contrary to the provisions of the Trading with the Enemy Act, under which the respondent purported to act in seizing petitioner's property.

All of the cases that have heretofore passed on the seizure power of the Alien Property Custodian under the provisions of the Trading with the Enemy Act of October 6, 1917, have uniformly held that Congress, in pursuance of the war power contained in Article I, Section 8, Clause 11 of the Constitution of the United States, has the power to authorize the seizure of enemy property only during time of war. This right was clearly reaffirmed in the World War II case of *Silesian-American Corp.* v. *Clark*, 332 U.S. 469, where this Court, at page 475, stated:

"This property was vested during war. There is no doubt but that under the war power, as heretofore interpreted by this Court, the United States, acting under a statute, may vest in itself the property of a national of an enemy nation. Unquestionably to wage war successfully, the United States may confiscate enemy property. *United States* v. *Chemical Foundation*, 272 U.S. 1, 11."

In the case of *Stoehr* v. *Wallace, et al.*, 255 U. S. 239, which was one of first cases to be decided by this Court construing the power of the Alien Property Custodian to seize enemy property during World War I, the court, at page 245, said:

"That Congress, in time of war, may authorize and provide for the seizure and sequestration, through executive channels, of property believed to be enemy-owned, if adequate provision be made for a return in case of mistake, is not debatable. *Central U. Trust Co.* v. *Garvan, supra.*"

The *Stoehr* v. *Wallace* and *Central U. Trust Co.* v. *Garvan* cases have been frequently cited by the courts as authority for sustaining seizures of enemy property throughout World War I and World War II.

In an opinion handed down by the Illinois Supreme Court in the case of *Orme* v. *Northern Trust Company*, 410 Ill. 354, the right of the Government to seize enemy property during time of war was stated in the following language, at page 361:

"That there are no restrictions upon the war power of Congress to confiscate enemy-owned property is no longer debatable. The right is absolute and the extent to which that right shall be exercised is a matter of policy to be determined solely by Congress.

* * *

"By virtue of the declaration of war upon us by Germany, the appellants, being German nationals, had

their property subjected to confiscation and vesting under a duly authorized war power as prescribed by an act of Congress and as amended by Presidential order as provided therein, *the war not then having been terminated by treaty or by proclamation according to the terms and provisions of the act.*" (Italics supplied)

In the case of *United States* v. *Chemical Foundation*, 272 U. S. 1, at page 9, this Court said:

"It is conceded that when seized the patents belonged to enemy Germans and that they were lawfully taken over by the Custodian. The purpose of the Trading with the Enemy Act was not only to weaken enemy countries by depriving their supporters of their properties, (*Miller* v. *Robertson*, 266 U. S. 243, 248), but also to promote production in the United States of things useful for the effective prosecution of the war. * * * Subsection (c) of Section 7 of the Act, as amended November 4, 1918, authorized the seizure of enemy-owned patents and provided that all property so acquired should be held and disposed of as provided by the Act."

Quoting from page 11:

"There is no support for a construction that would restrain the force of the broad language used. Congress was untrammeled and free to authorize the seizure, use or appropriation of such properties without any compensation to the owners. There is no constitutional prohibition against confiscation of enemy properties. (Citing cases)"

The Alien Property Custodian seized the patents involved in the above case by demands dated February 26, 1919 and April 5, 1919, at both of which times the state of war between the United States and Germany still existed.

In the case of *Woodson* v. *Deutsche, etc., Vormals*, 292 U. S. 449, this court said, at page 453:

"The Trading with the Enemy Act was passed by Congress in the exertion of the war power; its purpose was to weaken enemies by diminishing the sources from which they could obtain aid, and to strengthen this country by adding to resources for the successful prosecution of the war." • • •

In sustaining the reservation contained in the Joint Resolution of October 19, 1951 terminating the war between the United States and Germany, the Court below used this language (Appendix p. 6a):

"In the reservation of the power to seize the property of German nationals Congress may have had in mind that such seizures would tend to serve as a deterrent to a third war with Germany, but it is certain from the Legislative History of the Joint Resolution, as stated above, that the proceeds of the property seized were to be used to remedy the evils which had arisen from the war; that the proceeds of the seized property were to be used to pay the just and legitimate claims against the United States arising from the war in accordance with the War Claims Act of 1948. Seizure of the property of enemy aliens for this purpose was clearly a proper exercise of the war powers. Under the facts of this case it was not necessary that the actual seizure occur before the approval of the Joint Resolution formally terminating the state of war. Here the Congress considered it necessary to complete the work of cleaning up the aftermath of the war after the effective date of the formal declaration of peace. This was therefore incidental to the war and within the war powers. • • •"

The Court below sustains the reservation of the right in peace time to continue to seize property alleged to have been owned or controlled by German nationals prior to January 1, 1947 as a proper exercise by Congress of the war power.

If the holding of the Court below is sustained by this Court it would logically follow that if the Alien Property Custodian after the termination of the war determined that any particular property was owned or controlled by a German national on December 11, 1941, or at any time up to January 1, 1947, and seized such property by a vesting order, anyone who acquired such property subsequent to January 1, 1947 would be forever barred from instituting a suit seeking a recovery thereof.

The taking of petitioner's property under the circumstances disclosed by the record, it is respectfully submitted, is a confiscation without due process of law and in contravention of the guarantees contained in the Fifth Amendment to the Constitution of the United States; nor can such seizure be sustained as a proper exercise by Congress of its war powers as granted to it in Article I, Section 8, Clause 11 of the Constitution of the United States.

2. The decision of the Court below is in direct conflict with decisions of all other Courts construing the right of seizure after the termination of war.

The Court below in its opinion, after summarizing the cases cited by petitioner in its brief, states, at Appendix p. 4a:

> "None of these cases cited by the plaintiff decided that the Congress could not, by proper language in the Joint Resolution terminating World War II, have reserved the power to continue to seize enemy property."

The cases referred to are:

Miller, Alien Property Custodian v. *Rouse, et al.*, 276 Federal Reporter, 715;

Matheson v. *Hicks, Alien Property Custodian*, 10 Fed. Reporter (2d) 872;

In re Application of Miller, 288 Fed. Rep., 760;
Brownell v. *Edmunds,* 110 Federal Supp. 828;
Stoehr v. *Wallace,* 255 U. S. 239;
Sutherland v. *Guaranty Trust Co.,* 11 Fed. Rep. (2d) 696;
In re Von Rumohr's Will, 127 New York Supplement (2d) 327.

All of the cases that have ever passed on the validity of vesting orders hold that the right of the Custodian to vest property must be adjudged as of the date when the vesting is made; that the power to seize and sequester ends with the war, as does the power on the part of the Custodian under the Trading with the Enemy Act. There is no equivocation or reservation in any of the cases that have passed on this question. They all hold that any vesting after the formal termination of war is ineffective.

To sustain the holding of the Court below would be to entirely disregard the definition of "enemy" and "enemy country" as defined in the Trading with the Enemy Act.

It would countenance a situation where this country could be at peace with a foreign government and, yet, at the same time the nationals of such country could be considered "enemies" and any property which they might have owned during the time the two governments were at war could in time of peace be seized and confiscated.

We believe that such an anomalous situation cannot be sustained either under the provisions of the Trading with the Enemy Act or under the war power or any other Article of the Constitution of the United States.

The question submitted for ultimate decision by this Court involves not only petitioner's property but also

the property of numerous other persons seized by the respondent after the official termination of the war between the United States and Germany and the determination by this Court as to the validity of such seizures is of extreme importance to all persons whose property has been confiscated by the respondent since October 19, 1951. A decision by this Court construing the powers of the respondent under the reservation contained in the Joint Resolution of Congress will once and for all settle and adjudicate the rights not only of petitioner, but of all others similarly affected, and will eliminate a multiplicity of similar suits involving the same question.

3. The Court below by its decision has sanctioned the taking of private property in time of peace without the payment of just compensation, in utter disregard of the guarantees contained in the Fifth Amendment to the Constitution of the United States.

Petitioner in its complaint filed in the District Court alleged that the vesting order issued by respondent was void and of no force or effect; that its property was confiscated without due process of law; that it, therefore, had the right to appeal to the Courts for relief.

In support of this contention petitioner cites the case of *Ochoa* v. *Hernandez,* 230 U. S. 139, where this Court said, at page 161:

> "Without the guaranty of 'due process' the right of private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before Magna Charta, was embodied in that charter (Coke, 2 Ins. 45, 50) and has been recognized since the Revolution as among the safest foundations of our institutions. Whatever else may be uncertain about the definition of the term 'due process of law', all authorities agree that it inhibits the taking of one man's property and

giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."

In the case of *United States* v. *Lee*, 106 U. S. 196, this Court said, at page 218:

• • • "The instances in which the life and liberty of the citizen have been protected by the judicial writ of habeas corpus are too familiar to need citation, and many of these cases, indeed almost all of them, are those in which life or liberty was invaded by persons assuming to act under the authority of the government. *Ex Part Milligan*, 4 Wall. 2.

"If this constitutional provision is a sufficient authority for the court to interfere to rescue a prisoner from the hands of those holding him under the asserted authority of the government, what reason is there that the same courts shall not give remedy to the citizen whose property has been seized without due process of law, and devoted to public use without just compensation."

Quoting from page 220:

"The defence stands here solely upon the absolute immunity from judicial inquiry of every one who asserts authority from the executive branch of the government, however clear it may be that the executive possessed no such power. Not only no such power is given, but it is absolutely prohibited, both to the executive and the legislative, to deprive any one of life, liberty or property without due process of law, or to take private property without just compensation."

In view of the holding in these and in numerous other cases petitioner respectfully submits that it had the absolute right to appeal directly to the Courts to compel the restoration of its property taken from it without due process of law and the Court below erred in holding to the contrary.

CONCLUSION.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

In The

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 11305 October Term, 1954—January Session, 1955.

Ladue & Co.,
Plaintiff-Appellant,
vs.
Herbert Brownell, Jr., Attorney General of the United States, Etc.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 18, 1955.

Before Duffy, *Chief Judge,* Finnegan and Swaim, *Circuit Judges.*

Swaim, *Circuit Judge.* This appeal is from an order of the United States District Court for the Northern District of Illinois, Eastern Division, dismissing the plaintiff's complaint.

The plaintiff, Ladue & Co., an Illinois corporaton, a dealer in securities since 1948, brought this action against the defendant, Herbert Brownell, Jr., Attorney General of the United States, as Successor Alien Property Custodian, to recover property seized, as the property of enemy aliens, by the defendant under the alleged authority of the Trading with the Enemy Act, as amended, 50 U.S.C.A. App. Sec. 1, et seq. The complaint alleged that since its incorporation plaintiff had been a citizen of the United

States and that since that date it was neither an enemy, the ally of an enemy nor a national of any foreign enemy country within the meaning of the Trading with the Enemy Act, or any regulation, proclamation or order issued in connection with that Act.

The complaint further alleged that the plaintiff was the sole owner of certain stocks, securities and the accruals thereon, issued by the St. Louis Southwestern Railway Company and the City of New York; that at no time on or since April 13, 1953, had said property been owned, controlled or held for the benefit of any enemy aliens; that the defendant, on April 13, 1953, purporting to act under the authority of the Trading with the Enemy Act and certain executive orders relating thereto, issued his Vesting Order 19266, vesting in defendant said securities and the accruals thereon, the order alleging that the securities were owned by unknown German nationals; [redacted] on April 16, 1953, the defendant acting under said vesting order instructed the Manufacturers Trust Company of New York City to pay to defendant the $3,187.50 interest which had accrued on said securities during the period from October 1, 1945 to October 1, 1952, inclusive. The complaint further alleged that the said vesting order was void and of no force or effect, and that the action of the defendant in appropriating the securities described therein and the accruals therefrom was a confiscation and taking of plaintiff's property without due process of law.

The complaint therefore prayed that the defendant be ordered to revest in plaintiff the title to the securities, and that the defendant account for and pay to the plaintiff all moneys received by the defendant as income from said securities.

The Government moved to dismiss the complaint on the ground that plaintiff had not filed the notice of claim required by Section 9(a) of the Trading with the Enemy Act. The plaintiff in its brief in this court makes no mention of its failure to file the required notice of claim, apparently relying on its contention that the seizure, having been made after the official termination of war, was

unconstitutional and that a notice of claim was, therefore, unnecessary. We shall first consider the constitutionality of the seizure.

The plaintiff cites as supporting this contention several decisions in which there are various statements which plaintiff contends support its position. In *Brownell* v. *Edmunds*, 110 F. Supp. 828, the interest of the German nationals under a last will and testament did not vest until after the termination of the war. The Alien Property Custodian issued a vesting order in 1946 attempting to seize the interest of the German nationals before the interest was vested. The court there properly held that such a vesting order was invalid because at the time it was issued there was no interest in German nationals subject to seizure. The Joint Resolution by its terms only reserved the right to seize property which was "prior to January 1, 1947, subject to vesting or seizure under the provisions of the Trading with the Enemy Act * * *."

Stoehr v. *Wallace*, 255 U. S. 239, concerned a seizure during war. In the opinion, page 245, the Supreme Court said: "That Congress in time of war may authorize and provide for the seizure and sequestration through executive channels of property believed to be enemy-owned, if adequate provision be made for a return in case of mistake, is not debatable." That opinion was not concerned with whether such seizures might be made after the formal termination of the war. *Orme* v. *Northern Trust Co.*, 410 Ill. 354, 102 N. E. 2d 335, certiorari denied, *Von Hardenberg* v. *McGrath*, 343 U. S. 921, also involved property seized prior to the formal termination of the war.

In *Miller, Alien Property Custodian* v. *Rouse, et al.*, 2 Cir., 276 Fed. 715, a demand, signed before the date of the proclamation of peace in World War I, was served three days after the proclamation. The court there held, contrary to the contention of the Custodian, that the mere signing of the demand was not sufficient; that the property did not become the "subject" of a demand until all steps were taken which would vest the property in the United

States; that such vesting did not occur until the demand was served, which demand, coming after the declaration, was too late.

In *Matheson* v. *Hicks, Alien Property Custodian,* D. C., 100 F. 2d 872, 873, it was also held that a demand served after the termination of World War I was too late to transfer the property to the Custodian.

In *Application of Miller,* 2 Cir., 288 Fed. 760, 767, it was held that the Custodian, having properly made demands for property of an enemy alien could maintain action after termination of war to enforce a seizure which had already been effected by a proper demand. There the question was only as to the effect, if any, of the peace declaration on the claim of the United States to enemy property which had been seized prior to the termination of the war. The court there pointed out that the Joint Resolution of July 2, 1921, terminating World War I, United States Statutes at Large, Vol. 42, Part 1, pages 105, 106, expressly provided that: "All property * * * of all German Nationals which was on, April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents or employees, from any source or by any agency whatsoever, * * * shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law * * *." This resolution did not purport to deal with any property except that seized during the war.

None of these cases cited by the plaintiff decided that the Congress could not, by proper language in the Joint Resolution terminating World War II, have reserved the power to continue to seize enemy property.

The appellant concedes, as it must, that the courts of this country have uniformly upheld the right of the Government to seize enemy property during time of war on the theory that the right is a necessary adjunct to the ability to wage war successfully. *Silesian-American Corp.* v. *Clark,* 332 U. S. 469, 475; *Stoehr* v. *Wallace,* 255 U. S.

239, 245; *Orme* v. *Northern Trust Co.*, 410 Ill. 354, 102 N. E. 335.

But the appellant insists that where, as here, the Government seeks to use its war powers to seize property of enemy aliens after the state of war has been officially terminated, such a seizure of property may not be justified on the theory that it is a proper exercise of the war powers granted by Article I, Section 8, Clause 11, of the Constitution of the United States.

In the instant case the Joint Resolution which officially terminated the war with Germany expressly reserved and extended the power of the United States to seize for its own use all property located in the United States which prior to January 1, 1947, was subject to vesting or seizure under the Trading with the Enemy Act, and which was owned by nationals of Germany. The reservation of this power was an integral part of formally bringing the war to a close. Cessation of hostilities between the United States and Germany had occurred with the unconditional surrender of Germany on May 8, 1945. From that date to October 19, 1951, when the Joint Resolution was approved, only a technical state of war had existed between the United States and Germany. During that period of more than six years the Government had continued to seize property in this country belonging to German nationals.

In recommending to the Congress the adoption of the Joint Resolution declaring the end of the war the President explained (see Legislative History, U. S. Code Congressional and Administrative Service, 1951, pages 2354 to 2359) that the resolution reserving the seizure power was for the purpose of applying the proceeds of the property seized to pay just and legitimate claims against the United States arising from the war in accordance with the War Claims Act of 1948, 50 U. S. C. A. App. Sec. 2001, *et seq.*, and that if the seizure power were permitted to lapse immediately the Government would find it difficult to wind up the program in an orderly way or to carry out its commitments for the equitable settlement of intergovernmental differences relating to enemy property. The

President stated that there was nothing unusual about continuing, even after the conclusion of peace, the power to seize wartime enemy property as part of the peace settlement, citing as examples the treaties the United States had made at the conclusion of World War II with Bulgaria, Romania, Hungary and Italy, all of which treaties had authorized the continued seizure by the United States of property belonging to the nationals of each of those countries. In each of those cases the continuation of the seizure power was provided for in the bilateral peace agreements between this nation and each of the enemy nations involved. We can perceive no real difference between the power of the Government to retain such seizure power, as against individuals, in a treaty and in the unilateral declaration by this nation of the termination of the state of war. In each case the retention of the seizure power beyond the date of the termination of the war was a proper exercise of the war power. As said in *Stewart v. Kahn*, 78 U. S. 493, 507, the exercise of the war power is not limited to actual combat. "It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress."

In the reservation of the power to seize the property of German nationals Congress may have had in mind that such seizures would tend to serve as a deterrent to a third war with Germany, but it is certain from the Legislative History of the Joint Resolution, as stated above, that the proceeds of the property seized were to be used to remedy the evils which had arisen from the war; that the proceeds of the seized property were to be used to pay the just and legitimate claims against the United States arising from the war in accordance with the War Claims Act of 1948. Seizure of the property of enemy aliens for this purpose was clearly a proper exercise of the war powers. Under the facts of this case it was not necessary that the actual seizure occur before the approval of the Joint Resolution formally terminating the state of war. Here the Congress considered it necessary to complete the work of cleaning up the aftermath of the war after the effective date of the

formal declaration of peace. This was therefore incidental to the war and within the war powers. The Congress and the President may well have considered this work essential to a just and lasting peace, just as essential as the preparation for possible war by the training of armies when the United States was engaged in no war. In *United States* v. *Henderson*, 7 Cir., 180 F. 2d 711, 713, this court held that the Congress under its power to raise and support armies could conscript and train men in peace time; that it was not necessary to wait for actual war before starting such training.

Since the seizure here was within the war powers it was not a denial of due process, and the plaintiff before filing its complaint to recover was required, under Section 9(a) of the Trading with the Enemy Act, to file its notice of claim. The language of that Section clearly indicates that filing notice of such a claim is a condition precedent to plaintiff's right to file an action in court to recover such seized property or its proceeds. The plaintiff filed this action in the United States District Court on July 27, 1954. No claim for the return of the property had been filed with the defendant, and no application for its return had been filed with the President. Section 9(a) of the Act provides that any person who is not an enemy alien or an ally of an enemy and who claims any interest or title in seized property may file with the Alien Property Custodian a verified notice of claim containing such particulars as the Custodian may require and that "• • • if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit • • •" to establish his interest or ownership in the seized property.

In *Panatech Corp.* v. *Carl Zeiss, Inc.*, 110 F. Supp. 664, the United States District Court for the Southern District of New York held that this provision in Section 9 of the Act precluded the maintenance of such an action prior to the required notice of such a claim. In *Becker Co.* v. *Cummings*, 296 U. S. 74, 79, the remedy under Section 9(a) was said to be the only remedy of the nonenemy owner of property seized under the Act.

The action here was against the Attorney General to secure from him property which he was holding as custodian for the United States. The action was, therefore, an action against the United States and could be filed and maintained only by complying with the conditions prescribed by Congress in the Act. In *Bartlesville Zinc Co.* v. *Mellon*, 7 Cir., 56 F. 2d 154, 155, this court said of an action against the Government: "• • • Suitors may not bring actions against the United States without the latter's consent, and the limitations placed upon such permission [there that the action should not be brought later than two years after the passage of the law] are not mere statutes of limitations, but conditions precedent to the right to sue. After the expiration of the two-year period, plaintiff had no consent to sue, and the court no jurisdiction to entertain its complaint. [Citations.]" See also *Bryan* v. *United States*, 10 Cir., 99 F. 2d 549, 552. Since the plaintiff here failed to give the required notice of his claim, the District Court had no alternative but to dismiss the action.

The judgment is

AFFIRMED.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B.

The Trading with the Enemy Act, 50 U.S.C.A. App., 40 Stat. 411, as amended, Sec. 1, *et. seq.*:

Section 2:

"The word 'enemy' as used herein, shall be deemed to mean, for the purposes of such trading and of this Act (sections 1-6, 7-39 of this Appendix)

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy'."

"The words 'end of the war', as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act (Sections 1-6 and 7-39 of this Appendix)."

Section 12: (Paragraph 6)

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian, or deposited in the United States Treasury, shall be settled as Congress shall direct." • • •

APPENDIX C.

Public Law 181 Chapter 519

(65 Stat., 451)

JOINT RESOLUTION

To terminate the state of war between the United States and the Government of Germany.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war declared to exist between the United States and the Government of Germany by the joint resolution of Congress approved December 11, 1941, is hereby terminated and such termination shall take effect on the date of enactment of this resolution: Provided, however, That notwithstanding this resolution and any proclamation issued by the President pursuant thereto, any property or interest which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act, including accruals to or proceeds of any such property or interest, shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest.

Approved October 19, 1951.

APPENDIX D.

PROCLAMATION

The President of the United States on the 24th day of October, 1951, issued Proclamation No. 2950, as follows:

"Whereas, by a joint resolution, approved by the President on December 11, 1941, the Congress of the United States formally declared a state of war to exist between the United States and the Government of Germany (55 Stat. 796); and

Whereas, on December 31, 1946, the President proclaimed the cessation of hostilities of World War II; and,

Whereas, it has been and continues to be the policy of the United States to bring about the conclusion of a treaty of peace with the government of a united and free Germany, but efforts to this end have been frustrated and made impossible for the time being by the policy of the Soviet Government; and

Whereas, it has nevertheless been considered desirable to bring the existing state of war with Germany to a close and to remove Germany from its present enemy status, thus eliminating certain disabilities affecting German nationals; and

Whereas the rights, privileges, and status of the United States and the other occupation powers in Germany and the rights and privileges of the United States and its nationals to which it or they have become entitled as a result of the war, as well as the right to exercise or enforce the same, derive from the conquest of Germany and the assumption of supreme authority by the Allies and are not affected by the termination of the state of war; and

Whereas, the Congress of the United States by a joint resolution, approved October 19, 1951 (Public Law 181, 82d Congress), has resolved that the state

of war declared to exist between the United States and the Government of Germany is terminated and that such termination shall take effect on the date of enactment of such resolution;

Now, therefore, I, Harry S. Truman, President of the United States of America, pursuant to such joint resolution, do proclaim that the state of war between the United States and the Government of Germany declared by the joint resolution of Congress approved December 11, 1941 was terminated on October 19, 1951.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the City of Washington this 24th day of October, in the year of our Lord nineteen hundred and fifty-one, and of the Independence of the United States of America the one hundred and seventy-sixth

(SEAL) Harry S. Truman

By the President:

Dean Acheson,
Secretary of State.

(50 U.S.C.A. App., p. xx.)

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 87

LADUE & CO., PETITIONER

v.

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court did not write an opinion. The opinion of the Court of Appeals (Pet. 1a-8a) is reported at 220 F. 2d 468.

JURISDICTION

The judgment of the Court of Appeals was entered on March 18, 1955. The petition for a writ of

certiorari was filed on May 18, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner may maintain an action for the recovery of property vested under the Trading with the Enemy Act without filing a sworn notice of claim as required by Section 9(a) of the Act.

2. Whether Congress exceeded its constitutional authority by reserving the vesting power as to certain German property in the Joint Resolution of October 19, 1951, which terminated the war with Germany for most other purposes.

STATUTE INVOLVED

The pertinent provision of the Trading with the Enemy Act is Section 9(a). It is printed in an Appendix to this brief, *infra,* pp. 11-13.

STATEMENT

This action was brought by petitioner, an Illinois corporation, in the District Court for the Northern District of Illinois against respondent in his official capacity and as successor to the Alien Property Custodian. The complaint alleged that petitioner was the sole owner of certain described securities which had been vested by the respondent by Vesting Order No. 19266, dated April 13, 1953, and that said order was "absolutely void and of no force or effect" and "in violation of Article V of the Constitution of the United States". The prayer was for an order directing respondent to "revest"

in the petitioner title to the securities and to pay over monies earned by the securities subsequent to vesting. (R. 3-5.)

Respondent moved to dismiss the complaint for lack of jurisdiction, on the ground that petitioner had not filed the notice of claim required by Section 9(a) of the Act (R. 10). The District Court granted the motion (R. 25-26). The Court of Appeals affirmed, holding (a) that the seizure was constitutional, and (b) that the filing of a notice of claim was a condition of petitioner's right to maintain an action for the recovery of seized property or its proceeds (Pet. 1a-8a).

ARGUMENT

1. The courts below correctly concluded that the suit was barred at the threshold by failure to comply with the requirements of Section 9(a).

A suit to recover vested property is a suit against the United States for which Section 9(a) provides the "sole and exclusive" Congressional authorization. *Becker Co.* v. *Cummings,* 296 U. S. 74, 78; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 118; *Clark* v. *Uebersee Finanz-Korp.,* 332 U.S. 480, 487. Petitioner was accordingly obliged to allege and prove compliance with the conditions which Congress attached to its consent to suit. *Banco Mexicano* v. *Deutsche Bank,* 263 U.S. 591, 602-603. And see *McElrath* v. *United States,* 102 U.S. 426, 440; *United States* v. *Michel,* 282 U. S. 656, 659.

Section 9(a) provides that a non-enemy claimant of property which has been transferred to the Alien

Property Custodian or which has been vested by him may:

> . . . file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; . . . *if the claimant shall have filed the notice as above required* . . . said claimant may institute a suit in equity . . . [Emphasis added.]

The quoted language has always been understood as imposing a condition precedent to the right to sue under Section 9(a). See *Central Trust Co.* v. *Garvan,* 254 U. S. 554, 567-568; *Commercial Trust Co.* v. *Miller,* 262 U. S. 51, 56-57; *Stöhr* v. *Wallace,* 269 Fed. 827, 833 (S. D. N. Y.), affirmed, *sub nom. Stoehr* v. *Wallace,* 255 U. S. 239, 243. Indeed, the requirement seems to have been so clearly worded that there is only one other reported decision which turns on the point, *Panatech Corp.* v. *Carl Zeiss, Inc.,* 110 F. Supp. 664, 665 (S.D. N.Y.), in which the court reached the same result as did the courts below in the instant case.

The complaint contained no allegation that a notice of claim had been filed (R. 3-5), and, according to the uncontradicted affidavit of the Records Officer of the Office of Alien Property, no notice was filed (R. 11). Indeed, petitioner made no attempt to show that it had complied with the jurisdictional requirements of Section 9(a). Instead, it claims that "it had the absolute right to appeal directly

to the Courts to compel the restoration of its property taken from it without due process of law" (Pet. 12).

But the Fifth Amendment (see R. 5) is not a consent of the United States to be sued. See *Lynch* v. *United States,* 292 U. S. 571, 581-582. Cf. *Maricopa County* v. *Valley Bank,* 318 U. S. 357, 361-362. And the reasonableness of a requirement of the filing of a written notice of claim as a statutory condition on the right to sue the United States has been frequently recognized. *Angelus Milling Co.* v. *Commissioner of Internal Revenue,* 325 U. S. 293, 297; *United States* v. *Felt & Tarrant Co.,* 283 U. S. 269, 272; *United States* v. *Standard Oil Co.,* 158 F. 2d 126, 127-128 (C. A. 6), certiorari denied, 331 U. S. 836, and cases cited.

2. While petitioner's failure to comply with the terms of the exclusive statutory remedy makes it unnecessary to reach other issues, we shall also set forth our reasons for believing that the Court of Appeals was clearly correct in its further holding that petitioner's challenge to the vesting power was unfounded.

Petitioner's chief attack is on the constitutionality of the proviso or reservation in the Joint Resolution of October 19, 1951 (65 Stat. 451), which terminated the state of war with Germany for most purposes but continued in effect the authority to vest part of the German assets in this country. The proviso reads:

> That notwithstanding this resolution and any proclamation issued by the President pur-

> suant thereto, any property or interest *which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading with the Enemy Act of* October 6, 1917 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act . . . shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest. [Pet. 10a] [Emphasis added.]

The continuation of the authority to vest was thus limited to property in this country which was German-owned between December 11, 1941, and January 1, 1947. During that period the United States was at war with Germany, and such property was "enemy" and subject to seizure under the Trading with the Enemy Act. The effect of the Resolution was simply to set aside for future vesting that part of the German assets in this country.

The purpose of this continuation of the authority to vest was to enable the United States to fulfill the commitments it had made to war claimants in the War Claims Act of 1948 (62 Stat. 1240) and the engagements it had entered into with its allies in regard to reparations and German "external" assets. See the letter of the President to the Vice-

President (97 Cong. Rec. 7762), and Senate Report No. 892, Committee on Foreign Relations, 82d Cong., 1st Sess. (reprinted in U. S. Code Congressional & Administrative Service, 1951, Vol. 2, beginning at page 2354).[1]

The validity of the proviso is supported by the decisions of this Court. The war powers of the United States are not cut off short at the moment of the making of peace. *Woods* v. *Miller Co.*, 333 U.S. 138; *Ludecke* v. *Watkins*, 335 U. S. 160. And the war power may be exercised after the formal termination of war to deal with the problems directly arising out of the war. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146.

One purpose of the Trading with the Enemy Act is to provide for the payment of claims of Americans for losses occasioned by war. *Cummings* v. *Deutsche Bank*, 300 U. S. 115; *Propper* v. *Clark*, 337 U. S. 472, 484; *Clark* v. *Continental National Bank*, 88 F. Supp. 324 (D. Neb.). Cf. *Ware* v. *Hylton*, 3 Dall. 199, 227. Since the problem of war claims does not end with the war, it was proper to continue the authority to vest in order to meet the problem. Cf. *Woods* v. *Miller Co., supra; Hamilton*

[1] The "Agreement on Reparation from Germany", effective January 14, 1946 (61 Stat. 3157), provided for the charging against the agreed share of the United States in reparations of German assets within its jurisdiction and bound the United States so to dispose of such assets as to preclude their return to German ownership or control (61 Stat. at 3168). The Brussels Agreement (18 Dept. of State Bull. 6) provided for the resolution of conflicting Allied claims to German assets and was confirmed by Section 40 of the Trading with the Enemy Act (64 Stat. 1079).

v. *Kentucky Distilleries Co., supra.* In fact, that was substantially what was done in World War I. The Joint Resolution approved March 3, 1921 (41 Stat. 1359), terminated the effectiveness of other legislation which was in force during a state of war, but reserved and continued in effect the Trading with the Enemy Act and several other statutes. That reservation was held valid. *Commercial Trust Co.* v. *Miller,* 262 U. S. 51.

A provision for the continuation after the end of the war of the authority to seize enemy property has frequently been included in treaties of peace; it is a part of the process of terminating the war. See the 1951 Treaty with Japan (reprinted in U. S. Code Congressional & Administrative Service, 1951, Vol. 2, pp. 2730-2748), and the 1947 Treaties with Italy (61 Stat. 1245), Bulgaria (61 Stat. 1915), Rumania (61 Stat. 1757), and Hungary (61 Stat. 2109). The validity of the clause in the Treaty with Hungary was upheld in *Codray* v. *Brownell,* 207 F. 2d 610 (C.A. D.C.), certiorari denied, 347 U.S. 903. And in *Klein* v. *Palmer,* 18 F. 2d 932 (C.A. 2), a similar provision in the 1921 Treaty of Peace with Germany (42 Stat. 1939) was upheld as an exercise of the war power.[2]

The judgment of Congress that it is necessary to continue the power to seize enemy property after the formal terminaiton of the war is entitled to respect. Cf. *Ludecke* v. *Watkins, supra; Woods* v.

[2] Such a treaty provision has to be implemented by legislation. *Foster & Elam* v. *Neilson,* 2 Pet. 253, 313-314; *Codray* v. *Brownell, supra.*

Miller Co., supra; Hamilton v. *Kentucky Distilleries Co., supra.* And the determination of the President to exercise the power Congress has delegated to him would seem to be supported also by his power over the foreign affairs of the United States. See *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304.

As against this, petitioner relies (Pet. 9-10) on a group of cases decided after World War I which held that the Alien Property Custodian's authority to seize enemy property could not be exercised after the "end of the war". Those cases are readily distinguishable; they turned on the construction of the Joint Resolution which terminated the World War I "state of war" with Germany (42 Stat. 105), and that Resolution did not attempt to continue the power to make seizures after the war had ended.[3]

Of course, nothing in the October 19, 1951, Joint Resolution purports to exclude the application of Section 9(a) of the Act to property vested under its authority. If a plainitff claims that the property vested was not German-owned during the period ending January 1, 1947, he may, upon complying with the statutory conditions, sue for its return under Section 9(a).

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[3] Petitioner also cites two World War II cases: *Brownell* v. *Edmunds*, 110 F. Supp. 828 (W.D. Va.), and *In re von Rumohr's Will*, 127 N.Y.S. 2d 327. In those cases, the courts held that the German interests in question did not come into existence until 1951 or later, so there was no question of the application of the reserved power to seize pre-1947 German property.

CONCLUSION

The decision below is clearly correct and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
DALLAS S. TOWNSEND,
Assistant Attorney General.
JAMES D. HILL,
GEORGE B. SEARLS,
Attorneys.

JUNE, 1955.

APPENDIX

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U. S. C. App. 1, et seq.:

Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in

such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the United States District Court for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant, to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States

on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

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